

**DISASTER MANAGEMENT AND INDIAN FEDERAL STRUCTURE***by*

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**ABSTRACT**

*India has a history of being particularly susceptible to disasters specifically natural disasters considering its particular climatic characteristics and demographic features. India's susceptibility and vulnerability is greater than that of advanced nations due its social demography. Federal and healthcare systems have been put to the test as a result of the COVID 19 outbreaks over the world. Since no single jurisdiction can handle the situation on its own, the pandemic has highlighted the need to promote cooperative federalism. The constitution of India permits the Union government to take the initiative in collaborating with and assisting the states in exceptional situations like disasters. The Disaster Management Act 2005 and the Epidemic Diseases Act 1897 provide the legal framework for these initiatives. The overlapping of jurisdiction raise pertinent question about the maintenance of basic structure doctrine of the constitution as during disasters the administration of India tilt towards more as unitary than federal. This paper discusses about the dynamics of centre-state relations in India during the time of disasters.*

**Key Words;** *Disaster Management Act 2005, Federalism, Armed Forces, Funding Centre –State Relations*

## **Introduction:**

Federalism has always served as the guiding concept for distributing duties to address citizens' needs in times of crisis. It continues to be the best course of action, according to scientific studies and an examination of current catastrophes. The mainstay of the national endeavor should be NGOs, business ventures, and private citizenry. The federal government should fulfill its own obligations, establish an overall response framework, and support "train the trainer" initiatives that assist local communities in developing robust grassroots response mechanisms.<sup>1</sup> There are issues with the ambiguity of both the Disaster Management Act of 2005 and the Epidemic Diseases Act of 1897. Neither List II nor List III make any mention of disaster management as a legal topic, and no specific entry in List I deal with this in any way.

## **The Federal System and Residuary Powers of legislation**

The spread of COVID-19 has been designated as a "notified disaster for the objective of providing aid under SDRF" by the Ministry of Home Affairs'. The absence of the subject area "disaster" from all three lists in Schedule VII gives the centre the option to use its residuary authority. However, the centre passed the Disaster Management Act (DMA) in 2005, which derives its authority from entry 23 of List III. Concurrent List's sole purpose is to support joint initiatives between the centre and the states, hence the centre made a prudent choice by choosing not to use its residuary powers. One of the key components of Indian federalism is Schedule VII, and the highest court in the nation proclaimed federalism to be the fundamental framework of the Constitution in the famous case of *Kesavananda Bharati v. State of Kerala* in 1976. In light of this, it is crucial to read entry 23 of List III again, which is titled "Social Security and Social Insurance; Employment and Unemployment," in order to comprehend the insufficiency of the necessary authorities in times of crisis for the federal government and the states individually as well. It demonstrates that the DMA's role is constrained and limited in a disaster-like situation in India, indicating that the powers of the federal government and the

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<sup>1</sup> <https://www.heritage.org/homeland-security/report/learning-disaster-the-role-federalism-and-the-importance-grassroots>, *James Carafano and Richard Weitz* REPORT **HOMELAND SECURITY Learning from Disaster: The Role of Federalism and the Importance of Grassroots Response**, retrieved on 15 April 2023.

states should be preserved as stated in numerous of the items above when read in conjunction with Article 248 of the Constitution.<sup>2</sup>

## Legal Framework for Dealing with Disasters

- **The Epidemics Disease Act, 1897**

The act states “When at any time the State Government (now Centre) is satisfied that the State or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the State Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed”. Therefore, it is up to the state governments to decide what actions to take to stop the spread of an infectious or contagious illness. The only measures to be taken by the central government are to check and imprison those who are leaving the nation or entering it. It can only stop the illness from spreading between States<sup>3</sup>.

- **The Disaster Management Act 2005:**

The Centre Government's residual powers were used to establish the Disaster Management Act. As no single entry in List I specifically addresses it, neither List II nor List III treat catastrophe management as a legal matter. As a result, only Parliament could have approved

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<sup>2</sup>[https://www.epw.in/journal/2020/26-27/commentary/covid-19-and-dwindling-indian-federalism.html?0=ip\\_login\\_no\\_cache%3D9ac91895cd1487b7338e0ab20ac64a66](https://www.epw.in/journal/2020/26-27/commentary/covid-19-and-dwindling-indian-federalism.html?0=ip_login_no_cache%3D9ac91895cd1487b7338e0ab20ac64a66)

<sup>3</sup> Hemalatha, R. (2021, May 29). *Disaster Management Act, Epidemic Disease Act And COVID-19*. [www.livelaw.in: https://www.livelaw.in/columns/disaster-management-act-and-epidemic-disease-act-and-covid-19-174868](https://www.livelaw.in/columns/disaster-management-act-and-epidemic-disease-act-and-covid-19-174868), retrieved on 15 April 2023.

the Disaster Management Act utilising its residual legislative power under Article 248 . As a result, its use to combat the epidemic raised some legal concerns.<sup>4</sup>

.NDMA SDMA and DDMA at national, state and district levels have been established under the act. The DMA gives the Center a legislative role; it gives the states the primary responsibility for disaster management. The main tool at the states' disposal for disaster relief and response is the SDRF. Centre provides 75% and 90% of the SDRF depending upon the vulnerability level. Additionally, according to the NDRF's operational standards, the fund is primarily meant to offer urgent assistance to victims of disaster. In the wake of a disaster, neither the NDRF nor the SDRF may be utilized for rehabilitation or construction. These costs must be covered by regular budgetary heads or plan money. The Centre decided in 2016 not to create a mitigation fund because it could cover these costs with its existing programmes. To stop the states from borrowing too much money and setting the stage for another calamity, the Centre must step in and provide further disaster assistance.<sup>5</sup>

## The Major Area of Concern

Disasters are the situations which are beyond the capacity of communities both in terms of resources and Manpower. In case of India states are dependent on centre for resources as well as manpower. Funds required for managing the disasters are provided by the centre and armed forces are under the control of the centre. Although the police which comes under the state jurisdiction is the first respondent but due to law and order maintenance as the major responsibility of the states managed by the police. States are dependent on the help of armed forces for every unusual situation especially disasters. so funding and deployment of armed forces are the major areas of contention between the states.

### **Funding During Disasters:**

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<sup>4</sup> Awasthi, P. (2020, March 12). *centre invokes 'Epidemic Act' and 'Disaster Management Act' to prevent spread of coronavirus.*

<sup>5</sup> Arundhati Katju, R. R. (n.d.). *The gap in disaster management funding.* [www.livemint.com:https://www.livemint.com/Opinion/pKD1VKn5nxntI88ZB7KGxK/The-gap-in-disaster-management-funding.html](https://www.livemint.com/Opinion/pKD1VKn5nxntI88ZB7KGxK/The-gap-in-disaster-management-funding.html), retrieved on 15 April 2023.

According to the Finance Commissions, money for preventing catastrophes should be included in the federal, state, and local governments' plan budgets. The Thirteenth Finance Commission, specifically tasked with making recommendations for creating emergency preparedness funds at the federal, state, and local levels, reaffirmed this view.

The process of establishing a plan should include disaster mitigation, and any costs incurred should be covered by the funds allocated for that plan by the relevant ministries of the Union and the states. The fact that there are already plans at the federal and state levels is crucial. However, the existing budget levels might not be sufficient; therefore it is best left up to the Planning Commission and the NDMA to make the final call.

The absence of funding under the DMA exacerbates this issue. The DMA, which precedes the GST Act, increases the Center's responsibility for disaster management, but it hasn't led to an adequate fiscal allocation for the states. At the state level, similar arrangements are created. States' expectations that the centre will provide financial assistance after disasters are therefore justified.

A controversy took place on the creation of PM CARES Fund as well as it was said that the fund was kept secret, out of audit showing no transparency and accountability. Major contribution in the fund came from the PSUs and government owned institutions and especially from states. But the most controversial issue was that it was created under the PMO and there was no state level variant of it.<sup>6</sup>

## Deployment of Armed Forces

The deployment of armed forces during disasters in the states is also what goes against the federal character. The armed forces come under the Ministry of Home Affairs and they are directly deployed by the orders of central government.

### Conclusion:

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<sup>6</sup>Mondal, D. (2020, May 17). Funding Disaster Relief. *Business Today*. , pp. <https://www.businesstoday.in/magazine/cover-story/story/funding-disaster-relief-256741-2020-04-28>.retrieved on 25 April 2023.

India has faced several difficulties even without a pandemic because of its fragile and underfunded infrastructure and insufficient state competence due to size of population its demography. Despite a number of general policies and other choices made by the Centre, the operation of COVID-19 has mostly been conducted in a cooperative federalist manner. For a nation that has a long record of acrimonious centre-state conflicts over jurisdictions, this is a major accomplishment. For instance, the federal and state governments clashed so violently during the early stages of the epidemic in the US and Canada. The most important lesson learned from India's experience with the COVID-19 pandemic's second wave is that effective coordination between the federal government and the states is necessary to manage serious national crises. The federal government needs to be ready to act as the anchor.<sup>7</sup> However funding issue can be resolved with further devaluation and cooperative federalism.



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<sup>7</sup>Choutagunta, A., Manish, G. P., & Rajagopalan, S. (2021). Battling COVID-19 with dysfunctional federalism: Lessons from India. *Southern economic journal*, 87(4), 1267–1299. <https://doi.org/10.1002/soej.12501>, P1 9